

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“The Regulations”).

Chamber Ref: FTS/HPC/CV/21/2645

Re: Property at E32 Constitution Street 1/2, Dundee, DD3 6ND (“the Property”)

Parties:

RHM Contracts Limited (Dundee), 3 Kings Hill Meadow, Bude, Cornwall, EX23 8SR (“the Applicant”)

Mr Alex Forootan, E32 Constitution Street 1/2, Dundee, DD3 6ND (“the Respondent”)

Tribunal Member:

Martin McAllister (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay the sum of THREE THOUSAND EIGHT HUNDRED AND FIFTY NINE POUNDS AND 2 PENCE (£3,859.02) to the Applicant together with interest on the outstanding sum at 2.75% calculated from the date of this decision.

Background

- 1. This is an application seeking a payment order. It is dated 20TH October 2021. The Application states that the Applicant is seeking payment in respect of arrears of rent amounting to £2,753.02.**
- 2. By email to the Tribunal dated 23rd December 2021, the Applicant’s representative stated that the Applicant is seeking to amend the sum**

claimed to £3,553.02. The email stated that it was being copied to the Respondent.

3. The email of 23rd December 2021 stated that the Applicant was also looking to be paid a sum in respect of legal fees amounting to £306 inclusive of VAT. It stated that the contractual basis for claiming this was set out in clause 37 of the private residential tenancy agreement between the parties.

Case management Discussion

4. A case management discussion was held by audio conference on 11th January 2022 at 11.30 am. Ms Tania Royle of the Applicant's Representatives was present.

Preliminary Matters

5. The purpose of a case management discussion was explained.
6. There was no appearance by the Respondent despite commencement of the case management discussion being delayed until 11.40 pm.
7. The tribunal noted that it had a Certificate of Service from Sheriff Officers confirming that the papers concerning the case management discussion including its date and time had been served on the Respondent on 26th November 2021.
8. Ms Royle indicated that she saw no reason for a Hearing to be fixed to determine the application.

Findings in Fact

9.1 The Parties entered into a private residential tenancy agreement in respect of the Property on 9th March 2020.

9.2 The Respondent is contractually bound to pay monthly rent for the Property at a rate of £400 per month.

9.3 As at 1st December, the arrears of rent amounted to £3,859.02.

9.4 The private residential tenancy agreement makes provision for payment of interest on unpaid rent at a rate of 2.5% above Bank of England Base Rate.

9.5 The Bank of England Base Rate is 0.25%.

9.6 The private residential tenancy agreement makes provision for the Applicant recovering reasonable costs incurred as a result of the tenant's failure to pay rent.

9.7 The Applicant has been charged legal fees of £306 inclusive of VAT in respect of the application to and appearance at a Hearing of the First Tier Tribunal.

Reasons for Decision

10. The tribunal had before it the application, the private residential tenancy agreement, rent statement showing the sum of arrears to be £3,553.02, Certificate of Citation and invoice from Gilson Gray, solicitors addressed to the Applicant for the sum of £306 inclusive of VAT.

11. The tribunal considered that it had sufficient information to determine the application without a Hearing. It noted that the Respondent had not made representations or appeared at the case management discussion despite having its date intimated to him.

12. Ms Royle asked the tribunal to accept the terms of the rent statement showing arrears of £3,553.02 and that the Respondent had been made aware of the amended sum by virtue of the email of 14th December 2021 having been copied to him.

13. Ms Royle said that the Respondent had responded to that email and that there had been contact with him. She said that a Notice to Leave had been served on him.

14. Ms Royle said that the Respondent had not given any valid reason for non payment of rent.

15. Ms Royle referred the tribunal to clause 37.3.1 of the private residential tenancy agreement which stated: "If rent is 10 days overdue then interest will be chargeable from the day it was due until it is paid at a rate of 2.5% over Bank of England Base Rate." She said that the application sought payment of interest "from the date of citation." She conceded that she had not lodged a calculation of interest based on the contractual provisions of the private residential tenancy agreement and accepted the difficulties in interest being charged "from the date of citation." She indicated that the Applicant would be content with interest

being applied at a rate of 2.75% from the date of the Decision in terms of Rule 41A of the Tribunal Rules.

16. Ms Royle referred the tribunal to clause 37 of the private residential tenancy agreement which stated “The landlord shall be entitled to pursue the tenant for any reasonable costs incurred as a result of the tenant’s failure to pay rent reasonable costs incurred in pursuing the tenant for payment of unpaid rent.” Ms Royle submitted that the fee of £255 charged by her firm to the Applicant was reasonable and that, with VAT, the total sum due was £305. Ms Royle conceded that clause 37.3.4 stated that, if Pavilion Properties (the letting agents) submitted a Form 12 to the Tribunal for civil proceedings under the tenancy, they would be entitled to charge a fee of £90. Ms Royle said that this should be distinguished from the fee charged to her client which was in respect of not only submitting the form but dealing with the Tribunal and appearing at the case management discussion.
17. The tribunal determined that, on the basis of the rent statement, it was appropriate to find that there are arrears of rent amounting to £3,859.02. It accepted that the respondent had been given adequate notice of the sum being claimed.
18. The tribunal determined that the private residential tenancy agreement referred to interest being paid on outstanding amounts of rent, that the appropriate rate was 2.75% and that it was reasonable that it be charged from the date of the decision.
19. The tribunal accepted Ms Royle’s submission that it was appropriate that the Applicant be reimbursed for legal expenses incurred in making the application to the Tribunal and for her attendance at the case management discussion. It accepted that the sum of £90 referred to in the private residential tenancy agreement was restricted to the letting agent submitting an application form and that her firm’s fee was for more than that.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party

must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



**Martin J. McAllister
Legal Member of the First-tier
Tribunal
11th January 2022**